

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
) FO Docket No. 91-301
Petition for Waiver of the Commission's) FO Docket No. 91-171
Emergency Alert Requirements for)
Cable Television Systems)

RECEIVED

MAY 29 2002

To: Chief, Technical & Public Safety Division
Enforcement Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR WAIVER

I. Introduction

This petition is submitted on behalf of Buford Communications I, L.P. ("Buford") d/b/a Alliance Communications Network, to request a waiver or alternatively a 5-year extension of time, to comply with the Emergency Alert System ("EAS") requirements in Section 11.11(a) of the Commission's rules.¹ This rule requires that by October 1, 2002 all cable systems with less than 5,000 subscribers must provide national level EAS messages on all channels, or have EAS equipment capable of providing audio alert and video interrupt on all channels, and EAS messages on one channel.

Buford operates the following 10 cable television systems all of which serve less than 5,000 subscribers and 9 of which serve less than 1,000 subscribers:

¹ In its recent Report and Order, the Commission clarified that it "will continue to grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship." *In the Matter of Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, EB Docket No. 0166, RM-9156, RM-9215; ¶ 73 (Rel. Feb. 26, 2002). The Commission reiterated the information that must be contained in the waiver request: "(1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience." *Id.* This petition addresses each of the four areas.

No. of Copies rec'd 014
List ABCDE

<u>Headend²</u>	<u>No. of Subscribers</u>
Greenbrier, AR	2,520
Greersferry, AR	553
Perryville, AR	670
Plumerville, AR	526
Marshall, AR	531
Lakeview, AR	417
Lee County, AR	371
Coahoma, MS	886
Crowder, MS	171
Cherokee County, TX	96

II. Financial Status of Company

Because of the small size of these cable systems and their financial condition, it is not economically feasible for the Company to purchase and install the necessary EAS equipment at this time. Attached hereto as Attachment B are Income Statements for the years 2000 and 2001 regarding the cable systems. The Company does not break down this financial information on a system-by-system basis. However, it is evident from the limited revenues generated by these small systems that their financial resources are extremely limited. Significantly, the Profit and Loss Statement for the year ending 2001 indicates negative net income of \$1,470,808.00. This reflects a loss of \$218.00 per subscriber. The company can ill afford any additional expenses that will further worsen its already weak financial position.

These cable systems are located in small rural communities where the population density and homes per mile is relatively low, thus requiring a larger per-subscriber investment in cable plant and facilities than in cable systems serving more densely populated areas. Each of the 10 cable systems must maintain a cable headend and associated equipment. In addition, the Company has already spent substantial amounts upgrading many of its facilities. Requiring full EAS compliance by October of this year would result in serious economic harm to the Company.

The Commission has estimated EAS equipment costs at \$6,000 to \$10,000 per headend, as described in its in the Commission's 1997 EAS decision. *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Second Report and Order, 12 FCC Rcd. 15503, ¶ 23 (Sep. 29, 1997). However, contrary to what the Commission expected at the time of its Second Report and Order, the "anticipated equipment cost reductions" that would render compliance for small systems less burdensome, has not materialized. *Id.* at ¶ 25. Current estimates from equipment vendors indicate costs of approximately \$8,500 per cable system headend for equipment alone. The cost per subscriber is significant and increases in systems with fewer subscriber. For, example, for the Marshall, AR system to comply (which is in the mid-range of Buford's systems), the cost per subscriber would be \$16.00. The costs of compliance to the Cherokee County, TX system would be over \$88.54 per subscriber.

These cable systems cannot support additional rate increases to cover EAS compliance requirement costs. Such increases would further erode the Company's subscriber base. This is particularly true because of the significant competition these rural systems face from direct broadcast satellite ("DBS") services.³

Buford is aware of the Commission's decision which provided relief to small systems for EAS requirements in the form of allowing them to install an FCC-certified decoder, if such device is available by October 1, 2002, in lieu of an encoder/decoder unit. *In the Matter of*

² Attachment A lists all of the FCC communities served by these cable systems and their Community Unit numbers.

³ See e.g., Monica Hogan, *DBS Merger Roils Small Ops' World*, Multichannel News, Jan. 21, 2002, at http://www.findarticles.com/cf_0/m3535/3_23/82626449/print.html (noting efforts of DBS providers to drive small cable operators out of business); John M. Higgins, *Rural Ops Face Financial Squeeze*, Broadcasting & Cable, Dec. 18, 2001, at http://www.findarticles.com/cf_0/m0BCA/52_130/68738765/print.html (noting the difficulty rural operators face because of "being hammered by competition from DBS, [which] scar[es] off new investors."); Monica Hogan, *Pagon: Small Ops Will Fold*, Multichannel News, Feb. 15, 2001, at http://www.tvinsite.com/multichannelnews/index.asp?layout=print_page&doc_id=&articleID=CA171928 (noting Pegasus Communications Corp. Chairman and former rural cable operator Mark Pagon's prediction that the "vast majority of rural cable operators serving fewer than 5,000 customers" will go out of business in the next 10 years because of increased competition from DBS, lack of access to capital markets, and insufficient financial returns even if capital was available.)

Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, Report and Order, EB Docket No. 01-66, RM-9156, RM 9215, ¶ 71 (rel. Feb. 26, 2002). There are two reasons that this relief is not sufficient for Buford. First, the decoder-only unit will likely not be available until August 2003, well after the October 2002 deadline. Second, even if it becomes available, it does not provide sufficient relief for Buford. We understand that decoder only equipment would be only approximately \$1,000 less expensive than the encoder/decoder unit, *i.e.*, approximately \$7,500. Using the decoder only equipment to comply would still be cost prohibitive for Buford under the circumstances.

III. Alternative Sources of Emergency Alert System Information

In addition to financial hardship, the availability of numerous alternative sources of emergency alert information supports this waiver request. Buford carries the off-the-air television broadcast signals on the basic tier of each of its cable systems. Moreover, most systems have at least one 24-hour cable news channel on the basic tier. These 24-hour news networks ensure that subscribers have access to breaking national news events. Moreover, all systems carry The Weather Channel, which provides updated information on national as well as local weather events. In addition to cable service, television broadcast stations and AM and FM radio stations available off-the-air carry emergency alert information. Furthermore, many communities have civil defense siren warning systems in place as an alternative emergency alert source. Although there generally are no other cable television systems serving these communities, DBS service is available, which includes news and other programming containing emergency information. If there were a national emergency, Buford's subscribers would be notified by existing non-cable alerting systems, as well as by the cable news channels, and local over-the-air television broadcast stations carried by the cable systems.

IV. Likelihood of Hazardous Risks

Since Buford's cable systems are located in the South and Southwest, the most likely hazardous risks are weather related, such as tornadoes. Civil defense siren systems in many communities provide notice of tornadoes and serious weather systems. Citizens are also usually aware of heavy rains that may cause flooding hazards. Emergency weather information is available on the local stations carried on the basic tier and through The Weather Channel. Buford personnel work diligently to ensure the continued operation of its cable systems through weather emergencies so that these channels are available to provide information to the subscribers. Furthermore, the Commission's EAS rules do not require small cable systems to carry state and local weather and emergency information. *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Report and Order and FNPRM, 10 FCC Rcd 1786, ¶ 66 (rel. Dec. 9, 1994). This is especially noteworthy since those are the primary risks in the communities that Buford serves. Because the Company's systems are overwhelmingly in rural areas, they are not likely to be subject to nuclear or terrorist attacks. Also, Buford's cable systems are not located near nuclear reactors, major airports or international borders.

We ask the Commission to recognize the serious financial implications for Buford of complying with the EAS requirements. It is simply not economically feasible for the Company to comply.

Accordingly, for the foregoing reasons, Buford hereby requests waiver of the EAS requirements for all of its cable systems. Alternatively, we request a 5-year extension of time to enable Buford to improve the financial condition of these systems and increase the possibility that compliance with the Commission's EAS requirements would become economically feasible.

If any additional information is required to support approval of this waiver request, please contact Kay Monigold, Executive Vice President/Chief Operating Officer at Buford Media Group, 6125 Paluxy, Tyler, Texas 75703 or Robert James or Tim Tobin at the address below.

Respectfully submitted,

BUFORD COMMUNICATIONS I, L.P.

By:



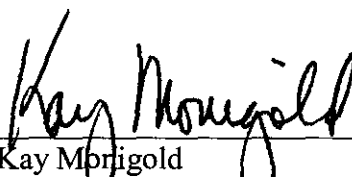
Robert L. James
Timothy P. Tobin
COLE, RAYWID & BRAVERMAN, LLP
1919 Pennsylvania Avenue, NW – Suite 200
Washington, DC 20006
202.659.9750

May 29, 2002

Attachment A: List of FCC "Community Units" served by Buford
Attachment B: Financial Information

CERTIFICATION

I, Kay Monigold, Executive Vice President/Chief Operating Officer, hereby certify that statements made in the foregoing Petition for Waiver are made in good faith and are true and correct to the best of my knowledge, information and belief.



Kay Monigold
Executive Vice President/
Chief Operating Officer

April 23, 2002

Attachment A

Buford Communications I, L.P. Community Unit Numbers

Marshall, AR	AR0325
Rondo, AR	AR0538
Elaine, AR	AR0445
Lakeview, AR	AR0619
Plumerville, AR	AR0542
Aubrey, AR	AR0539
Friars Point, AR	MS0322
Jonestown, MS	MS0324
Crowder, MS	MS0323
Lula, MS	MS0325
Wooster, AR	AR0660
Faulkner County, AR	AR0659
Perryville, AR	AR0456
Higden, AR	AR0426
Perry, AR	AR0454
Cleburne County, AR	AR0424
Bigelow, AR	AR0628
Oppelo, AR	AR0477
Greers Ferry, AR	AR0425
Perry County, AR	AR0455
Greenbrier, AR	AR0661

Alliance Communications Network
Profit & Loss
January through December 2000

	<u>Jan - Dec 00</u>
Ordinary Income/Expense	
Income	
4000 · Basic Revenue	1,174,068
4100 · Pay Revenue	158,938
4200 · Installation Revenue	25,236
4300 · Other Revenue	16,663
Total Income	<u>1,374,906</u>
Expense	
6999 · Uncategorized Expenses	0
5010 · Salaries & Wages	125,684
5020 · Benefits	46,386
5030 · Employee Expenses	5,606
5040 · Repair & Maintenance	48,933
5050 · Marketing Expense	10,304
5060 · Professional Services	28,983
5070 · Programming Cost	396,038
5080 · Facility Expense	160,349
5090 · Other Operating Expense	71,791
8000 · Non Operating Expense	979,413
Total Expense	<u>1,873,487</u>
Net Ordinary Income	-498,581
Other Income/Expense	
Other Income	
7000 · Non Operating Income	44,708
Total Other Income	<u>44,708</u>
Net Other Income	<u>44,708</u>
Net Income	<u><u>-453,873</u></u>

**Alliance Communications Network
Statement of Earnings
December 31, 2001**

Actual	Budget	Difference	Income	Actual	Budget	Difference	Year-End-Goal
209,859	256,843	(46,984)	Basic Revenue	2,417,559	2,583,825	(166,266)	2,583,827
40,272	39,203	1,069	Pay Revenue	362,945	353,500	9,445	353,496
1,009	6,554	(5,545)	Installation Revenue	52,933	92,784	(39,851)	92,784
1,134	2,130	(996)	Other Revenue	61,416	57,617	3,799	57,622
252,274	304,730	(52,456)	Total Revenue	2,894,854	3,087,726	(192,872)	3,087,729
Non - Operating Revenue							
1,788	1,788	0	Interest Income	25,556	25,555	0	55,519
0	0	0	Gain/Loss of Sale of Asset	0	0	0	0
0	0	0	Misc.	0	0	0	0
1,788	1,788	0	Total Non - Operating Revenue	25,556	25,555	0	55,519
254,062	306,518	(52,456)	Total Revenue	2,920,410	3,113,281	(192,871)	3,143,248
Expenses							
24,109	25,163	(1,054)	Salaries & Wages	324,877	312,589	12,288	312,588
9,824	8,986	838	Benefits	114,655	110,117	4,538	110,120
311	694	(383)	Employee Expenses	24,846	7,998	16,848	7,997
8,778	7,041	1,737	Repair & Maintenance	94,596	78,742	15,854	78,744
5,738	5,821	(83)	Marketing Expense	44,687	67,807	(23,120)	67,804
3,703	0	3,703	Professional Services	28,980	0	28,980	0
81,089	90,974	(9,885)	Programming Cost	911,528	981,204	(69,676)	981,208
39,608	25,489	14,119	Facility Expense	365,463	304,905	60,558	304,906
18,807	15,817	2,990	Other Operating Expense	212,375	164,846	47,529	164,846
191,967	179,985	11,982	Total Expenses	2,122,008	2,028,208	93,800	2,028,213
Non - Operating Expense							
95,785	95,785	0	Depreciation	963,234	963,234	0	983,994
24,398	24,398	0	Amortization	292,776	292,776	0	322,054
0	0	0	Interest Expense	0	0	0	0
1,013,199	1,013,199	0	Management Fee	1,013,199	1,013,199	0	0
0	0	0	Misc.	0	0	0	0
1,133,382	1,133,382	0	Total Non - Operating Expenses	2,269,209	2,269,209	0	1,306,048
1,325,349	1,313,367	11,982	Total Expenses	4,391,217	4,297,417	93,800	3,334,261
(1,071,287)	(1,006,849)	(64,438)	Total Earnings	(1,470,808)	(1,184,136)	(286,672)	(191,012)